

[REDACTED]

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[REDACTED]

[REDACTED]

DEC 24 1981

Dear Applicant:

Your application for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code has been considered.

Your Articles of Incorporation provide that you are "...organized and operated exclusively for educational, literary, and other non-profit purposes..."

Your By-Laws provide that your purposes shall include the furnishing of studio space to members, where they may create their art products, teach classes, attend workshops and exhibit their products. Membership is open to all persons upon application and approval of the Board of Directors. The board shall establish dues charge those using the studio space and hanging and display facilities and may adjust said dues at their discretion for the welfare of the Gallery. The board may establish "patron" class of membership for those who do not require studio space nor display services. Furthermore, the board may establish various membership classifications with appropriate dues and fees at its discretion.

Statements furnished in support of the application show that you plan to offer regular art classes to the public. Tuition will be charged for these art classes. Monthly studio membership dues are \$[REDACTED], Gallery commission on sales is [REDACTED]%, and other fees have yet to be established. Studio space is limited to members, gallery space is available first to members and then others, art classes are available to the general public, and the gallery is open free to the public.

Receipts for the period ended [REDACTED] (\$[REDACTED]), are not set out in detail as to source. However, budgets for the periods ending [REDACTED], show anticipated receipts of \$[REDACTED] from studio space dues, and \$[REDACTED] from gallery fees.

Code	Initials	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
		[REDACTED]					
Signature		[REDACTED]					

Section 501(a) of the Code describes certain organizations exempt from Federal income tax under section 501(a) and reads, in part, as follows:

"(3) Corporations, not for profit, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involved the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."

Section 1.501(a)(3)-1 of the regulations provides, in part, as follows:

"(a)(1) In order to be exempt as an organization described in section 501(a)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt."

"(a)(2) The term 'exempt purpose or purposes,' as used in this section, means any purpose or purposes specified in section 501(a)(3), as defined and elaborated in paragraph (4) of this section."

"(b)(1)(i) An organization is organized exclusively for one or more exempt purposes only if its articles of organization (referred to in this section as its 'articles') as defined in subparagraph (2) of this paragraph:

(a) Limit the purposes of such organization to one or more exempt purposes; and

(b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes."

"(b)(1)(ii) An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes, even though such organization is, by the terms of such articles, created for a purpose that is no broader than the purposes specified in section 501(c)(3).

and "

"(a)(1) Primary activities. An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose."

"(a)(2) Distribution of earnings. An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals."

"(d)(1)(ii) An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests."

a)(1) An organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purposes and if the organization is not organized and operated for the primary purpose of carrying on an unrelated trade or business. An organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under section 501(c)(3).

Revenue Ruling 66-118, 1966-1 Cumulative Bulletin 136, holds that a nonprofit organization created to foster and develop the arts by sponsoring a public art exhibit at which the works of unknown but promising artists are selected by a panel of qualified judges for viewing and are gratuitously

displayed is exempt from Federal income tax under section 501(c)(3). The organization does not charge the artist any fees for the privilege of having their works displayed. Nor does the organization sell or offer the displayed works for sale.

Revenue Ruling 71-395, 1971-2 Cumulative Bulletin 229, holds that a cooperative art gallery formed and operated by a group of artists for the purpose of exhibiting and selling their works does not qualify for exemption under section 501(c)(3). The gallery was formed and is operated by a group of artists for the purposes of exhibiting and selling their works. Additional artists are admitted to membership by approval of the existing members. The gallery is open to the public and no admission is charged. The gallery retains a commission from sales and rental sufficient to cover the cost of operating the gallery. Any deficits that occur are covered by special assessments of the members. The gallery in this case is engaged in having and selling only the works of its own members and is a vehicle for promoting the sale of their work. It serves the private purposes of its members, even though the exhibition and sale of paintings may be an educational activity in other respects.

Revenue Ruling 76-151, 1976-1 Cumulative Bulletin 151, holds that an organization formed by art patrons to exhibit and sell art works of local artists, retaining a commission on sales less than customary charges and not sufficient to cover the cost of operation of the gallery, does not qualify for exemption under section 501(c)(3) of the Code. The organization selects modern art works of local artists for exhibit at its gallery and for possible sale. The gallery is open to the general public. The organization retains a ten per-cent commission on sales. The commissions are substantially less than customary commercial charges and are not sufficient to recover the cost of operating the gallery. In this case, the artists are being directly benefited by the exhibition and sale of their works. Since ninety percent of all sales proceeds are turned over to the individual artists, such direct benefits are substantial by any measure and the organization's provision of them cannot be dismissed as being merely incidental to its other purposes and activities.

You are not organized exclusively for purposes specified in section 501(c)(3) of the Code. A significant portion of your activity is providing, for a fee, space for your members to create and display their art works. You established a 10% commission on sales of the art works display in your gallery by your members, and have provided for additional revenue, if needed, to be established by your board at its discretion.

Accordingly, since you are not organized exclusively for purposes specified in section 501(c)(3) of the Code and are operated for the benefit of private rather than public interests, we conclude that you do not qualify for exemption under section 501(c)(3) of the Code and are, therefore, required to file income tax returns on Form 1120.

It follows, therefore, that contributions to you are not deductible by donors under section 170 of the Code.

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a statement of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7430(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding before the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If this determination letter becomes a final determination, we will notify the appropriate State officials, as required by section 5104(a) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).

Sincerely,

Special Director

Enclosures:
Form 6018
Publication 892